

## Senate Highways and Transportation Committee 2013

### Nominations from the Governor

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- The Legislature's role of confirming gubernatorial appointees is grounded in Art. VI, Section 8, Montana Constitution

**Section 8. Appointing power.** (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

- The Montana Code Annotated addresses Executive appointments and Senate confirmation in terms of Executive power rather than Legislative responsibility.

**2-15-111. Appointment and qualifications of department heads.** (1) At the beginning of each gubernatorial term, the governor shall appoint each department head who serves as a director as provided in this chapter.

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of the person's professional and administrative knowledge and experience and additional qualifications that are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors must be elected or appointed and serve and have their vacancies filled as provided by law.



- The procedure for confirming appointees of the governor is purely the domain of the legislature and is outlined in Chapter 7 of the Senate Rules. The Senate Rules outline the confirmation process as follows.

## CHAPTER 7

### Nominations from the Governor

**S70-10. Nominations.** (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any office subject to Senate confirmation, the Governor shall appoint some fit person to discharge the duties of the office until the next meeting of the Senate, when the Governor shall nominate a person to fill the office.

**S70-20. Introduction and first reading of nominations.** (1) Nominations received from the Governor must be:

- (a) received by the President;
- (b) delivered to the Secretary of the Senate;
- (c) read under Order of Business No. 4, messages from the Governor; and
- (d) referred to committee. The President of the Senate may refer any individual nomination contained in a list received from the Governor to any standing committee.

(2) The procedure in subsection (1) constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

**S70-30. Committee process -- preliminary reports -- separate consideration.** (1)

(a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include the nominee submitted to the committee or a group of nominees, the group of nominees being specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been given.

(2) Following the hearings for a group of nominees, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees. A preliminary standing committee report is not required for a resolution for a single nominee pursuant to subsection (5).

(3) (a) If a Senator wishes to have an individual nominee or group of nominees considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.



(b) A Senator shall request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report must include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator or when a single nomination has been submitted to a committee, the committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include only the single or separated nominee. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, an additional hearing is not required to be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) After the report has been read, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

- Senator Essmann, as Senate President, is currently working with his leadership team to determine which nominees to refer to the respective standing committees. It is likely that the governor, as he identifies additional individuals to serve in various capacities in his administration, will continue to forward nominees to the Senate President throughout the session. Therefore, senators should anticipate further information on nominees and on procedural developments as the 63rd Session reaches full stride.

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